

JUSTICE LAW CORPORATION  
Douglas Han (SBN 232858)  
[ghan@justicelawcorp.com](mailto:ghan@justicelawcorp.com)  
Shunt Tatavos-Gharajeh (SBN 272164)  
[statavos@justicelawcorp.com](mailto:statavos@justicelawcorp.com)  
Jason Rothman (SBN 304961)  
[jrothman@justicelawcorp.com](mailto:jrothman@justicelawcorp.com)  
751 N. Fair Oaks Ave., Suite 101  
Pasadena, California 91103  
Telephone: (818) 230-7502  
Facsimile: (818) 230-7259

Attorneys for Plaintiffs Jasmine Johnson,  
Jade Khodar-Fisher, and Brittanie Boruff,  
on behalf of themselves and all similarly situated

**UNITED STATES DISTRICT COURT**

**FOR THE NOTHERN DISTRICT OF CALIFORNIA**

JASMINE JOHNSON, JADE KHODAR-  
FISHER and BRITTNIE BORUFF,  
individually, and on behalf of other members  
of the general public similarly situated;

Plaintiffs,

v.

TRUMPET BEHAVIORAL HEALTH, LLC, a  
Delaware limited liability company;  
QUALITY BEHAVIORAL OUTCOMES,  
LLC, a Delaware limited liability company;  
and DOES 1 through 100, inclusive;

Defendants.

Case No.: 3:21-cv-03221-WHO

**CLASS ACTION**

Assigned for All Purposes To:  
Honorable William H. Orrick  
Courtroom 2

**FIRST AMENDED CLASS ACTION  
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Wages and Overtime Under Labor Code § 510;
3. Meal Period Liability Under Labor Code § 226.7;
4. Rest-Break Liability Under Labor Code § 226.7;
5. Violation of Labor Code §§ 226(a);
6. Violation of Labor Code § 203;
7. Failure to Reimburse Expenses § 2802; and
8. Violation of Business & Professions Code § 17200 *et seq.*

**DEMAND FOR JURY TRIAL**

Complaint Filed: March 1, 2021  
Case Removed: April 30, 2021  
Trial Date: None Set

1 Plaintiffs Jasmine Johnson, Jade Khodar-Fisher, and Brittanie Boruff, (hereinafter  
2 collectively “Plaintiffs”), on behalf of themselves and all others similarly situated (collectively,  
3 “Employees”; individually, “Employee”) complains of Defendants, and each of them, as follows:

#### 4 **INTRODUCTION**

5 1. Plaintiffs brings this action on behalf of themselves and all current and former  
6 Employees within the State of California who, at any time four (4) years prior to the filing of this  
7 lawsuit, are or were employed as non-exempt, hourly employees by Defendants TRUMPET  
8 BEHAVIORAL HEALTH, LLC, a Delaware limited liability company; QUALITY  
9 BEHAVIORAL OUTCOMES, LLC, a Delaware limited liability company, and DOES 1 through  
10 100 (all defendants being collectively referred to herein as “Defendants”). Plaintiffs allege that  
11 Defendants, and each of them, violated various provisions of the California Labor Code, relevant  
12 orders of the Industrial Welfare Commission (IWC), and California Business & Professions Code,  
13 and seeks redress for these violations.

14 2. Upon information and belief, the same violations Plaintiffs endured at Defendants’  
15 multiple California locations were also experienced by all non-exempt hourly employees working  
16 for Defendants throughout California. Plaintiffs were employed by Defendants and (1) shared  
17 similar job duties and responsibilities, (2) were subjected to the same policies and practices, and  
18 (3) endured similar violations at the hands of Defendants as the other Class Members who served  
19 in similar and related positions throughout California.

#### 20 **THE PARTIES**

##### 21 **A. The Plaintiff**

22 3. Plaintiff Jasmine Johnson has resided in Alameda County, and during the time  
23 period relevant to this Complaint, was employed by Defendants as a non-exempt hourly employee  
24 within the State of California based out of Defendants’ location in San Jose, California. Upon  
25 information and belief, Plaintiff Jasmine Johnson was employed by Defendants from  
26 approximately January 2020 through October of 2020.

27 ///

28 ///

1           4.       Plaintiff Jade Khodar-Fisher has resided in Solano County, and during the time  
2 period relevant to this Complaint, was employed by Defendants as a non-exempt hourly employee  
3 within the State of California based out of Defendants' location in Solano, California. Upon  
4 information and belief, Plaintiff Jade Khodar-Fisher was employed by Defendants from  
5 approximately March of 2018 through January of 2019.

6           5.       Plaintiff Brittanie Boruff has resided in Alameda County, and during the time period  
7 relevant to this Complaint, was employed by Defendants as a non-exempt hourly employee within  
8 the State of California based out of Defendants' location in Alameda, California. Upon  
9 information and belief, Plaintiff Brittanie Boruff was employed by Defendants from approximately  
10 January 2019 through July of 2019.

11           **B.       The Defendants**

12           6.       Defendant TRUMPET BEHAVIORAL HEALTH, LLC ("TRUMPET"), is a  
13 Delaware limited liability company, and lists its principal offices in Lakewood, Colorado.  
14 TRUMPET has been the employer listed on the wage statements and employment records issued  
15 to Plaintiffs during the relevant time period that Plaintiffs were employed with Defendants.

16           7.       Defendant QUALITY BEHAVIORAL OUTCOMES, LLC ("QUALITY"), is a  
17 Delaware limited liability company, and lists its principal offices in Lakewood, Colorado.  
18 QUALITY has been the employer listed on the wage statements and employment records issued to  
19 Plaintiffs during the relevant time period that Plaintiffs were employed with Defendants.

20           8.       The true names and capacities, whether individual, corporate, associate, or  
21 whatever else, of the Defendants sued herein as Does 1 through 100, inclusive, are currently  
22 unknown to Plaintiffs, who therefore sues these Defendants by such fictitious names under Code  
23 of Civil Procedure § 474. Plaintiffs are informed and believe and thereon alleges that Defendants  
24 designated herein as Does 1 through 100, inclusive, and each of them, are legally responsible in  
25 some manner for the unlawful acts referred to herein. Plaintiffs will seek leave of court to amend  
26 this Complaint to reflect the true names and capacities of the Defendants designated herein as  
27 Does 1 through 100 when their identities become known.  
28

1           9.       Plaintiffs are informed and believe and thereon alleges that each Defendant acted in  
2 all respects pertinent to this action as the agent of the other Defendants, that Defendants carried  
3 out a joint scheme, business plan, or policy in all respects pertinent hereto, and that the acts of  
4 each Defendant are legally attributable to the other Defendants. Furthermore, Defendants acted in  
5 all respects as the employers or joint employers of Employees. Defendants, and each of them,  
6 exercised control over the wages, hours or working conditions of Employees, issued policies  
7 governing their employment, or suffered or permitted Employees to work, or engaged, thereby  
8 creating a common law employment relationship, with Employees. Therefore, Defendants, and  
9 each of them, employed or jointly employed Employees.

10           10.       Whenever and wherever reference is made in this Complaint to any act by a  
11 defendant or defendants, such allegations and references shall also be deemed to mean the acts and  
12 failures to act of each defendant acting individually, jointly, and severally.

13           11.       Whenever and wherever reference is made to individuals who are not named as a  
14 Defendant in this Complaint but were agents, servants, employees and/or supervisors of  
15 Defendants, such individuals at all relevant times acted on behalf of Defendants within the scope  
16 of their employment.

17                               **JURISDICTION AND VENUE**

18           12.       This Court has jurisdiction over this Action pursuant to California Code of Civil  
19 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought  
20 as a Class Action on behalf of similarly situated Employees of Defendants pursuant to California  
21 Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district  
22 pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the  
23 obligations and liabilities giving rise to this lawsuit occurred at least in part in Alameda County.  
24 Defendants maintain and operate company facilities in Alameda county and employs Plaintiffs and  
25 Class Members throughout California.

26       ///

27       ///

28       ///

1 **FACTUAL BACKGROUND**

2 13. The Employees who comprise the Class, including Plaintiffs, are non-exempt  
3 employees pursuant to the applicable Wage Order(s) of the IWC. Defendants hire hourly  
4 employees who work in non-exempt positions at the direction of Defendants in the State of  
5 California. Plaintiffs and Class Members were either not paid by Defendants for all hours worked  
6 or were not paid at the appropriate minimum, regular and overtime rates. Plaintiffs contend that  
7 Defendants failed to pay Plaintiffs and Class Members all wages due and owing to their detriment.

8 14. As discussed in detail below, Defendants' employment practices resulted in (i)  
9 Class Members performing off-the-clock pre-shift and post-shift work without compensation (ii)  
10 rounding down of hours worked to either a quarter of an hour or to Class Members shift schedules  
11 (iii) the under-recording of all hours worked, resulting in failure to pay overtime wages, (iv)  
12 failure to furnish accurate wage statements, (v) failure to provide timely, uninterrupted meal  
13 periods and rest breaks; (vi) failure to reimburse all necessary business expenditures, and (vii)  
14 failure to timely pay Class Members upon separation. Defendants' conduct thus violated various  
15 provisions of the California Labor Code and applicable Wage Orders.

16 15. The work performed by Plaintiffs and the other Class Members was that of a non-  
17 exempt employee. More specifically, Plaintiffs worked as Behavior Therapists. Part of the time  
18 Plaintiffs would work with Defendants' clients within Defendants' facilities and on other instances  
19 they would provide behavioral therapy while at the client's home. While the Plaintiffs worked  
20 different hours and days from each other, Monday through Friday, they each worked with children  
21 and assisted with the behavioral health of those children. For example, upon information and  
22 belief, (i) Plaintiff Jade Khodar-Fisher<sup>1</sup> typically worked Monday through Friday, 8:00 a.m. to  
23 7:00 p.m., (ii) Plaintiff Brittne Boruff<sup>2</sup> typically worked Monday through Friday, and while she  
24 worked an average of twenty (20) through twenty (25) hours per week, her daily scheduled per  
25 week fluctuated as she did not have a set schedule, and (iii) Jasmine Johnson also typically worked  
26

27 \_\_\_\_\_  
28 <sup>1</sup> According to the time sheets within Plaintiffs counsel's possession, Plaintiff Jade Khodar earned between \$18.00-  
\$18.36 per hour.

<sup>2</sup> According to the time sheets within Plaintiffs counsel's possession, Plaintiff Boruff earned \$18.00 per hour.

Monday through Friday, and similarly to Plaintiff Boruff<sup>3</sup> her daily scheduled per week fluctuated as she did not have a set schedule. Moreover, while each Plaintiffs schedules may have differed, they each suffered the same wage and hour violations as detailed below.

16. Upon information and belief, Defendants did not implement a manual or electronic time keeping system and/or software for Plaintiffs and Class Members. Plaintiffs instead recorded their hours worked through an application that only recorded their work sessions.<sup>4</sup> Plaintiffs', and upon information and belief the Class Members, did not have an independent way to record hours worked. This translated into Class Members being unable to record any work-related activities that they engaged in, while under Defendants' control and authority, before and/or after their session started. Thus, Defendants failed to pay Plaintiffs and Class Members all wages due and owing for pre-shift and post-shift hours worked while under Defendants' control.

17. Pre-shift and post shift hours worked occurred in many different ways, all to Plaintiffs' detriment. Regarding Plaintiffs inability to independently clock in/out separate from their session, Plaintiffs would incur off the clock pre-shift hours in having to walk over to said application/tablet instead of being afforded the ability to clock in and start their shift upon immediately entering Defendants premises and/or Defendants' client's homes. Secondly, to their detriment, Plaintiffs also communicated with other behaviorial therapists and Defendants' client's parents while off the clock because they were instructed to clock in and out according to their session schedules. In instances when Plaintiffs remained logged into their session beyond their scheduled session times, in order for example to apprise a child's parents of the days activities, they would get reprimanded by their supervisors. On average Plaintiffs estimate that they occurred about five (5) minutes of off the clock activities per day due, in part, to not having an independent method of clocking in and out separate from their session schedule.

18. Plaintiffs also incurred pre-shift and post-shift off the clock work, to their detriment, in the form of driving. More specifically Plaintiffs were not paid for the time spent when driving between Defendants' facilities and/or Defendants client's homes. Once one session

---

<sup>3</sup> According to the time sheets within Plaintiffs counsel's possession, Plaintiff Johnson earned \$18.00 per hour.

<sup>4</sup> By "sessions" Plaintiffs are referring to when they started/ended their session with their client.

1 ended Plaintiffs would often have to drive to the next session. This time was not only unrecorded  
2 (as they did not have an independent way to clock in separate from their session schedule) but  
3 Plaintiffs were also not reimbursed for this mileage on a regular basis. Plaintiffs conservatively  
4 estimate that in instances when they had to drive between location's they incurred a conservative  
5 thirty (30) minutes of off the clock time, to their detriment.

6 19. This was an intentional and calculated practice of Defendants to avoid paying Class  
7 Members all duly owed wages. Thus, Class Members worked longer hours than recorded by  
8 Defendants. This above-mentioned off-the-clock work also resulted in overtime hours accruing  
9 earlier than when Defendants started paying them in a work shift. Plaintiffs further contend that  
10 Defendants' policy and practice of only allowing Class Members to record their sessions instead  
11 of all hours worked results, over time, to the detriment of Class Members by systematically under-  
12 compensating them. When coupled with Plaintiffs and Class Members working longer post-shift  
13 hours off the clock and without compensation, this resulted in substantial regular and overtime  
14 hours worked under the control and authority of Defendants during each work shift that remain  
15 unpaid.

16 20. Defendants' unlawful conduct was driven, upon information and belief, by the  
17 decision to pay Class Members based on their scheduled shift times rather than the hours they  
18 actually worked. This uniformly applied policy of requiring off-the-clock work in conjunction  
19 with timekeeping records that reflected shift schedules rather than actual hours worked, operated  
20 as an unlawful rounding policy because it was not neutral and resulted, over time, to the  
21 substantial detriment of Class Members by systematically under-compensating them. This meant  
22 that Plaintiffs were regularly performing pre-shift and post-shift work related functions for  
23 Defendants, all off the clock and uncompensated for, to their detriment.

24 21. To the extent that Defendants paid overtime to Plaintiffs and Class Members, it  
25 began doing so well after eight (8) hours into a work shift day and/or forty (40) hours a week, as  
26 Defendants' corresponding time records and paystubs show. Therefore, from at least four (4) years  
27 prior to the filing of this lawsuit and continuing to the present, Defendants had a consistent policy  
28 or practice of failing to pay Employees for all hours worked, and failing to pay minimum wages,

1 overtime wages, and double time wages for all time worked as required by California Law and in  
2 violation of the Labor Code § 1197, IWC Wage Order MW-2014, and paragraphs 2(K), 2(S), and  
3 4(A)-4(C) of the applicable IWC Wage Orders. Defendants' willful actions resulted in the  
4 systematic underpayment of wages to Class Members, including underpayment of overtime and  
5 double time pay to Class Members over a period of time.

6 22. To the extent Defendants paid double time to Plaintiffs and Class Members, it did  
7 so at a rate less than double their standard hourly rate of pay, Therefore Plaintiffs and Class  
8 Members were underpaid double time for hours worked.

9 23. As a result of Defendants' unlawful policies and practices, Plaintiffs and Class  
10 Members incurred overtime hours worked for which they were not adequately and completely  
11 compensated for, in addition to the hours they were required to work off-the-clock. To the extent  
12 applicable, Defendants also failed to pay Plaintiffs and Class Members at an overtime rate of 1.5  
13 times the regular rate for the first eight hours of the seventh consecutive work day in a week and  
14 overtime payments at the rate of two (2) times the regular rate for hours worked over eight (8) on  
15 the seventh consecutive work day, as required under the Labor Code and applicable IWC Wage  
16 Orders.

17 24. Additionally, Defendants failed to provide all the legally required unpaid, off-duty  
18 meal periods and all the legally required paid, off-duty rest periods to the Plaintiffs and the other  
19 Class Members, including as required by Labor Code §§ 226.7 and 512, and paragraphs 11 and 12  
20 of the applicable IWC Wage Orders.

21 25. Defendants' policy of rounding the time keeping entries also resulted in under-  
22 reporting hours worked in a manner that would impact when Class Members were to receive off-  
23 duty meal and rest periods, resulting in meal and rest periods that were either provided late, were  
24 impermissibly shortened, or were interrupted by work demands. This often resulted in meal and  
25 rest breaks being taken generally later than required by law.

26 26. Defendants did not have a policy or practice which provided or recorded all the  
27 legally required unpaid, off-duty meal periods. Due to Defendants rounding policy, the inability to  
28 independently control clocking in/out, and requiring Plaintiffs and Class Members to drive



1 between locations, Plaintiffs and Class Members were required to perform work as ordered by  
2 Defendants for more than five (5) hours during a shift, but were often required to do so without  
3 receiving a lawful and timely meal break, and were sometimes required to take shortened meal  
4 breaks in order to keep up with the demands and pressures from Defendants. To the extent  
5 Defendants provided Class Members timely meal breaks, they were not properly recorded. More  
6 specifically, Plaintiffs were unable to leave Defendants' clients unattended during a session,  
7 regardless of the sessions duration. This meant that there was no ability to take a proper off-duty  
8 and timely meal break. Furthermore, Defendants often required Plaintiffs to take unlawful meal  
9 breaks while driving between destinations, leaving Plaintiffs and Class Members having to eat  
10 while driving in order to arrive at their next destination on time and before their session started.

11 27. Therefore, from at least four (4) years prior to the filing of this lawsuit and  
12 continuing to the present, meal period violations thus occurred in one or more of the following  
13 manners:

- 14 a. Class Members were not provided full thirty-minute duty free meal periods for  
15 work days in excess of five (5) hours and were not compensated one (1) hour's  
16 wages in lieu thereof, all in violation of, among others, Labor Code §§ 226.7,  
17 512, and the applicable Industrial Welfare Commission Wage Order(s);
- 18 b. Class Members were not provided second full thirty-minute duty free meal  
19 periods for work days in excess of ten (10) hours;
- 20 c. Class Members were required to work through at least part of their daily meal  
21 period(s);
- 22 d. Class Members were not provided with "premium pay," i.e. one hour of wages  
23 at each Employee's effective hourly rate of pay, for each meal period that  
24 Defendants failed to provide or deficiently provided.
- 25 e. Meal periods were not recorded;
- 26 f. Meal periods were provided after five hours of continuous work during a shift;
- 27 g. Class Members were restricted in their ability to take a full duty free thirty-  
28 minute meal period; and

1 h. Class Members were unable to leave the premises during their meal periods.

2 28. Plaintiffs and Class Members were also regularly required by Defendants to work  
3 through or during their rest breaks and were not provided with one hour's wages in lieu thereof.  
4 Moreover, on instances when rest breaks were provided, they were provided alongside meal  
5 breaks instead of separately. More specifically, as Plaintiffs were unable to leave Defendants  
6 clients unattended during shift/session schedules, Plaintiffs were unable to take a break to even go  
7 to the bathroom.

8 29. Rest period violations therefore arose in one or more of the following manners:

9 i. Class Members were required to work without being provided a minimum ten  
10 (10) minute rest period for every four (4) hours or major fraction thereof  
11 worked and were not compensated one (1) hour of pay at their regular rate of  
12 compensation for each workday that a rest period was not provided;

13 j. Class Members, due to the busy work environment, were restricted in their  
14 ability to take timely off-duty rest breaks which in turn were often provided at  
15 the end of a shift instead of every four (4) hours worked, or major fraction  
16 thereof; and

17 30. Defendants also consistently failed to issue accurate itemized wage statements as  
18 required by Labor Code § 226(a). The wage statements are required to show the total hours  
19 worked by Class Members, amongst other items detailed below, which they do not. The absence  
20 of showing total hours worked, combined with Defendants' practice of paying all double time  
21 hours worked by Class Members at a rate under double their standard hourly rate lead to confusion  
22 about how many hours were actually worked and at which rates per pay period.

23 31. From at least four (4) years prior to filing this lawsuit and continuing to the present,  
24 Defendants have also had a consistent policy of failing to pay all wages owed to Employees at the  
25 time of their termination of within seventy-two (72) hours of their resignation, as required by  
26 California wage-and-hour laws.

27 ///

28 ///

32. Defendants' management also did not reimburse Plaintiffs and Class Members for all necessarily incurred expenses in performance of their job duties. Plaintiffs incurred personal cellular phone expenses and mileage from driving between Defendants clients locations, in the performance of their job duties, that were uncompensated for. For example, Plaintiffs allege that they and Class Members had to use their cell phones to speak to their supervisors and/or other therapists. In regards to non-reimbursed mileage, Plaintiffs were not regularly reimbursed mileage when they had to drive between Defendants locations and/or clients homes.

33. In light of the foregoing, Plaintiffs bring this action on behalf of themselves and on behalf of all similarly situated Employees, pursuant to, *inter alia*, Labor Code §§ 201, 202, 203, 204, 218.6, 226, 226.7, 510, 512, 558, 1185, 1194, 1194.2, 1197, 2802, and California Code of Regulations, Title 8, section 11000 *et seq.*

34. Furthermore, pursuant to Business and Professions Code §§ 17200-17208, Plaintiffs and their fellow Class Members seek injunctive relief, restitution, and disgorgement of all benefits Defendants have enjoyed from their violations of Labor Code and the other unfair, unlawful, or fraudulent practices alleged in this Complaint.

## CLASS ALLEGATIONS

35. Plaintiffs brings this class action on behalf of themselves and all others similarly situated pursuant to Code of Civil Procedure § 382. Plaintiffs seeks to represent a Class (or “the Class” or “Class Members”) defined as follows: “All current and former hourly-paid or non-exempt employees of Defendants within the State of California, at any time during the period of four (4) years prior to the filing of the lawsuit and ending on a date to be determined by the court.” (“Class Period”)

36. Further, Plaintiffs seek to represent the following Subclasses composed of and defined as follows:

k. Subclass 1. Minimum Wages Subclass. All Class Members who were not compensated for all hours worked for Defendants at the applicable minimum wage.

1. Subclass 2. Wages and Overtime Subclass. All Class Members who were not

1 compensated for all hours worked for Defendants at the required rates of pay,  
2 including for all hours worked in excess of eight in a day and/or forty in a  
3 week.

4 m. Subclass 3. Meal Period Subclass. All Class Members who were subject to  
5 Defendants' policy and/or practice of failing to provide unpaid 30-minute  
6 uninterrupted and duty-free meal periods or one hour of pay at the Employee's  
7 regular rate of pay in lieu thereof.

8 n. Subclass 4. Rest Break Subclass. All Class Members who were subject to  
9 Defendants' policy and/or practice of failing to authorize and permit Employees  
10 to take uninterrupted, duty-free, 10-minute rest periods for every four (4) hours  
11 worked, or major fraction thereof, and failing to pay one hour of pay at the  
12 Employee's regular rate of pay in lieu thereof.

13 o. Subclass 5. Wage Statement Subclass. All Class Members who, within the  
14 applicable limitations period, were not provided with accurate itemized wage  
15 statements.

16 p. Subclass 6. Unauthorized Deductions from Wages Subclass. All Class  
17 Members who were subject to Defendants' policy and/or practice of  
18 automatically deducting 30-minutes worth of wages from Employees for  
19 alleged meal periods they were denied and/or by understating the hours worked  
20 by Employees.

21 q. Subclass 7. Termination Pay Subclass. All Class Members who, within the  
22 applicable limitations period, either voluntarily or involuntarily separated from  
23 their employment and were subject to Defendants' policy and/or practice of  
24 failing to timely pay wages upon termination.

25 r. Subclass 8. Expense Reimbursement Subclass. All Class Members who  
26 incurred necessary and reasonable expenses in connection with performing their  
27 job duties for Defendants and who were subject to a policy and/or practice  
28 under which such expenses were not reimbursed.

1 s. Subclass 9. UCL Subclass. All Class Members who are owed restitution as a  
2 result of Defendants' business acts and practices, to the extent such acts and  
3 practices are found to be unlawful, deceptive, and/or unfair.

4 37. Plaintiffs reserve the right under California Rule of Court 3.765 to amend or  
5 modify the class description with greater particularity or further division into subclasses or  
6 limitation to particular issues. To the extent equitable tolling operates to toll claims by the Class  
7 against Defendants, the Class Period should be adjusted accordingly.

8 38. Defendants, as a matter of company policy, practice and procedure, and in violation  
9 of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order requirements,  
10 and the applicable provisions of California law, intentionally, knowingly, and willfully, engaged  
11 in a practice whereby Defendants failed to correctly calculate compensation for the time worked  
12 by Plaintiffs and the other members of the Class, even though Defendants enjoyed the benefit of  
13 this work, required employees to perform this work and permitted or suffered to permit this work.  
14 Defendants have uniformly denied these Class Members wages to which they are and were  
15 entitled, and failed to provide meal periods or authorize and permit rest periods, in order to  
16 unfairly cheat the competition and unlawfully profit.

17 39. This action has been brought and may properly be maintained as a class action  
18 under the provisions of Code of Civil Procedure § 382 because there is a well-defined community  
19 of interest in litigation and proposed Class is easily ascertainable.

20 **A. Numerosity**

21 40. The potential members of the Class as defined are so numerous that joinder of all  
22 the members of the Class is impracticable. While the precise number of Class Members has not  
23 been determined at this time, Plaintiffs are informed and believes that Defendants employ or,  
24 during the time period relevant to this lawsuit, employed hundreds of Employees who satisfy the  
25 Class definition within the State of California.

26 41. Accounting for employee turnover during the relevant time period increases this  
27 number substantially. Plaintiffs allege that Defendants' employment records will provide  
28 information as to the number and location of all Class Members.

1           **B. Commonality**

2           42. There are questions of law and fact common to the Class that predominate over any  
3 questions affecting only individual Class Members. The common questions are numerous and  
4 substantial and stem from Defendants' uniform policies and/or practices of violating the California  
5 Labor Code addressed above. As such, these common questions predominate over individual  
6 questions concerning each individual Class Member's showing as to his or her eligibility for  
7 recovery or as to the amount of damages. These common questions of law and fact include:

- 8           a. Whether Defendants failed to pay Employees minimum wages;
- 9           b. Whether Defendants failed to pay Employees wages for all hours worked;
- 10          c. Whether Defendants failed to pay Employees overtime based on proper  
11 calculation of the regular rate of pay;
- 12          d. Whether Defendants failed to pay Employees overtime as required under Labor  
13 Code § 510;
- 14          e. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable  
15 IWC Wage Orders, by failing to provide Employees with requisite meal periods  
16 or premium pay in lieu thereof;
- 17          f. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC  
18 Wage Orders, by failing to authorize and permit Employees to take requisite  
19 rest breaks or provide premium pay in lieu thereof;
- 20          g. Whether Defendants violated Labor Code § 226(a) by providing Employees  
21 with inaccurate wage statements;
- 22          h. Whether Defendants violated Labor Code § 204 by failing to timely pay wages;
- 23          i. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to  
24 pay wages and compensation due and owing at the time of termination of  
25 employment;
- 26          j. Whether Defendants' conduct was willful;
- 27          k. Whether Defendants violated Labor Code § 2802 by failing to reimburse  
28 necessary business related expenses;

1           1. Whether Defendants violated Labor Code § 1194 by failing to compensate all  
2           Employees during the relevant time period for all hours worked, whether  
3           regular or overtime;

4           m. Whether Defendants violated Business and Professions Code § 17200 *et seq.*;  
5           and

6           n. Whether Employees are entitled to equitable relief pursuant to Business and  
7           Professions Code § 17200 *et seq.*

8           **C.     Typicality**

9           43.     The claims of the named Plaintiffs are typical of those of the other Employees. The  
10          Class Members all sustained injuries and damages arising out of and caused by Defendants'  
11          common course of conduct in violation of statutes, as well as regulations that have the force and  
12          effect of law, as alleged herein.

13          **D.     Adequacy of Representation**

14          44.     Plaintiffs will fairly and adequately represent and protect the interest of the  
15          Employees. Counsel who represents the Employees are experienced and competent in litigating  
16          employment class actions.

17          **E.     Superiority of Class Action**

18          45.     A class action is superior to other available means for the fair and efficient  
19          adjudication of this controversy. Individual joinder of all Employees is not practicable, and  
20          questions of law and fact common to all Employees predominate over any questions affecting only  
21          individual Employees. Each Employee has been damaged and is entitled to recovery by reason of  
22          Defendants' illegal policies or practices of failing to properly compensate Employees.

23          46.     As to the issues raised in this case, a class action is superior to all other methods for  
24          the fair and efficient adjudication of this controversy, as joinder of all Class Members is  
25          impracticable and many legal and factual questions to be adjudicated apply uniformly to all Class  
26          Members. Further, as the economic or other loss suffered by vast numbers of Class Members may  
27          be relatively small, the expense and burden of individual actions makes it difficult for Class  
28          Members to individually redress the wrongs they have suffered. Moreover, in the event

1 disgorgement is ordered, a class action is the only mechanism that will permit the employment of  
2 a fluid fund recovery to ensure that equity is achieved. There will be relatively little difficulty in  
3 managing this case as a class action, and proceeding on a class-wide basis will permit Employees  
4 to vindicate their rights for violations they endured which they would otherwise be foreclosed  
5 from receiving in a multiplicity of individual lawsuits that would be cost prohibitive to them.

6 47. Class action treatment will allow those persons similarly situated to litigate their  
7 claims in the manner that is most efficient and economical for the parties and the judicial system.  
8 Plaintiffs are unaware of any difficulties in managing this case that should preclude class  
9 treatment. Plaintiffs contemplate the eventual issuance of notice to the proposed Class Members  
10 that would set forth the subject and nature of the instant action. The Defendants' own business  
11 records can be utilized for assistance in the preparation and issuance of the contemplated notices.  
12 To the extent that any further notice is required additional media and/or mailings can be used.

13 48. Defendants, as a prospective and actual employer of the Employees, had a special  
14 fiduciary duty to disclose to prospective Class Members the true facts surrounding Defendants'  
15 pay practices, policies and working conditions imposed upon the similarly situated Employees as  
16 well as the effect of any alleged arbitration agreements that may have been forced upon them. In  
17 addition, Defendants knew they possessed special knowledge about pay practices and policies,  
18 most notably intentionally refusing to pay for all hours actually worked which should have been  
19 recorded in Defendants' pay records and the consequence of the alleged arbitration agreements  
20 and policies and practices on the Class Members as a whole.

21 49. Plaintiffs and the Class Members did not discover the fact that they were entitled to  
22 all pay under the Labor Code until shortly before the filing of this lawsuit nor was there ever any  
23 discussion about Plaintiff's and the Class' waiver of their Constitutional rights of trial by jury,  
24 right to collectively organize and oppose unlawful pay practices under California and federal law  
25 as well as obtain injunctive relief preventing such practices from continuing. As a result, the  
26 applicable statutes of limitation were tolled until such time as Plaintiffs and Class Members  
27 discovered their claims.

28 ///



1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PAY MINIMUM WAGES**

3 **(Against All Defendants)**

4 50. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in  
5 full herein.

6 51. Defendants failed to pay Class Members minimum wages for all hours worked and  
7 provided them with inaccurate wage statements that prevented Plaintiffs and Class Members from  
8 learning of these unlawful pay practices.

9 52. Employees worked hours and did not receive wages, including as alleged above in  
10 connection with off-the-clock work and rounding. Defendants, and each of them, have required  
11 Class Members to submit manually rounded time records that reflect shift schedules instead of  
12 actual time worked, which resulted in off-the-clock work and underpayment of all wages owed to  
13 employees over a period of time, while benefiting Defendants. Defendants' uniform pattern of  
14 unlawful wage and hour practices manifested, without limitation, applicable to the Class as a  
15 whole, as a result of implementing a uniform policy and practice that denied accurate  
16 compensation to Plaintiffs and the other members of the Class as to minimum wage pay.

17 53. In California, employees must be paid at least the then applicable state minimum  
18 wage for all hours worked. (IWC Wage Order MW-2014). Additionally, pursuant to California  
19 Labor Code § 204, other applicable laws and regulations, and public policy, an employer must  
20 timely pay its employees for all hours worked. Defendants failed to do so.

21 54. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage" states:  
22 "The minimum wage for employees fixed by the commission is the minimum wage to be paid to  
23 employees, and the payment of a less wage than the minimum so fixed is unlawful."

24 55. The applicable minimum wages fixed by the commission for work during the  
25 relevant period is found in the Wage Orders. The minimum wage provisions of California Labor  
26 Code are enforceable by private civil action pursuant to Labor Code § 1194(a) which states:  
27 "Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the  
28 legal minimum wage or the legal overtime compensation applicable to the employee is entitled to

1 recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime  
2 compensation, including interest thereon, reasonable attorney's fees and costs of suit."

3 56. As described in California Labor Code §§ 1185 and 1194.2, any action for wages  
4 incorporates the applicable Wage Order of the California Industrial Welfare Commission. Also,  
5 California Labor Code §§ 1194, 1197, 1197.1 and those Industrial Welfare Commission Wage  
6 Orders entitle non-exempt employees to an amount equal to or greater than the minimum wage for  
7 all hours worked. All hours must be paid at least at the statutory or agreed upon rate, and no part  
8 of this rate may be used as a credit against a minimum wage obligation.

9 57. In committing these violations of the California Labor Code, Defendants  
10 inaccurately recorded or incorrectly calculated the time worked, and consequently underpaid the  
11 actual time worked by Plaintiffs and other members of the Class. Defendants acted in an illegal  
12 attempt to avoid the payment of all earned wages, and other benefits in violation of the California  
13 Labor Code, the Industrial Welfare Commission requirements and other applicable laws and  
14 regulations. As a result of these violations, Defendants also failed to timely pay all wages earned  
15 in accordance with California Labor Code § 1194.

16 58. California Labor Code § 1194.2 also provides for the following remedies: "In any  
17 action under Section 1194 . . . to recover wages because of the payment of a wage less than the  
18 minimum wages fixed by an order of the commission, an employee shall be entitled to recover  
19 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon."

20 59. In addition to restitution for all unpaid wages, pursuant to California Labor Code §  
21 1197.1, Plaintiffs and Class Members are entitled to recover a penalty of \$100.00 for the initial  
22 failure to timely pay each employee minimum wages, and \$250.00 for each subsequent failure to  
23 pay each employee minimum wages.

24 60. Pursuant to California Labor Code § 1194.2, Plaintiffs and Class Members are  
25 further entitled to recover liquidated damages in an amount equal to wages unlawfully unpaid and  
26 interest thereon.

27 ///

28 ///

61. Defendants have the ability to pay minimum wages for all time worked and have willfully refused to pay such wages with the intent to secure for Defendants a discount upon this indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Employees.

62. Wherefore, Plaintiffs and Class Members are entitled to recover the unpaid minimum wages, liquidated damages in an amount equal to the minimum wages unlawfully unpaid, interest thereon and reasonable attorney's fees and costs of suit pursuant to California Labor Code § 1194(a). Plaintiffs and the other members of the Class further request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the assessment of any statutory penalties against Defendants, in a sum as provided by the California Labor Code and/or other applicable statutes. To the extent minimum wage compensation is determined to be owed to Class Members who have terminated their employment, Defendants' conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties under California Labor Code § 203, which penalties are sought herein on behalf of these Class Members. Defendants' failure to timely pay all wages owed also violated Labor Code § 204 and resulted in violations of Labor Code § 226 because they resulted in the issuance of inaccurate wage statements. Defendants' conduct as alleged herein was willful, intentional and not in good faith. Further, Plaintiffs and other Class Members are entitled to seek and recover statutory costs.

## SECOND CAUSE OF ACTION

## FAILURE TO PAY WAGES AND OVERTIME UNDER LABOR CODE §§ 510, 1194

**(Against All Defendants)**

63. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in full herein.

64. California Labor Code §§ 1194 and 1198 provides that employees in California shall not be employed more than eight (8) hours in any work day, and/or more than forty (40) hours in any workweek, or work a seventh (7th) day in a work week unless they receive additional compensation beyond their regular wages in amounts specified by law.

65. California Labor Code § 1194 provides that “any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to

1 recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime  
2 compensation, including interest thereon, reasonable attorney's fees, and costs of suit." The action  
3 may be maintained directly against the employer in an employee's name without first filing a  
4 claim with the Department of Labor Standards and Enforcement.

5         66. By their conduct, as set forth herein, Defendants violated California Labor Code §  
6 510 (and the relevant orders of the Industrial Welfare Commission) by failing to pay Employees:  
7 (a) time and one-half their regular hourly rates for hours worked in excess of eight (8) hours in a  
8 workday or in excess of forty (40) hours in any workweek or for the first eight (8) hours worked  
9 on the seventh day of work in any one workweek; or (b) twice their regular rate of pay for hours  
10 worked in excess of twelve (12) hours in any one (1) day or for hours worked in excess of eight  
11 (8) hours on any seventh day of work in a workweek. Defendants had a consistent policy of  
12 rounding time records, not paying Employees wages for all hours worked, under-reporting actual  
13 hours worked, and not paying proper overtime and double rates, as detailed above.

14         67. Defendants, and each of them, have intentionally and improperly required Plaintiffs  
15 and Class Members to accept changed, rounded, adjusted and/or modified hours worked, or  
16 otherwise caused them to work off the clock to avoid paying Plaintiffs and Class Members all  
17 earned and owed straight time and overtime wages and other benefits, in violation of the  
18 California Labor Code, the California Code of Regulations and the IWC Wage Orders and  
19 guidelines set forth by the Division of Labor Standards and Enforcement. Defendants have also  
20 violated these provisions by requiring Plaintiffs and other similarly situated non-exempt  
21 Employees to work through meal periods when they were required to be clocked out. Therefore,  
22 Employees were not properly compensated, nor were they paid overtime rates for hours worked in  
23 excess of eight hours in a given day, and/or forty hours in a given week. Based on information and  
24 belief, Defendants did not make available to Employees a reasonable protocol for correcting time  
25 records when Employees worked overtime hours or to fix incorrect time entries that were under  
26 recorded by Defendants, to the Employee's detriment. Defendants have also violated these  
27 provisions by requiring Plaintiffs and other similarly situated Employees in the Class to work  
28 through meal periods when they were required to be clocked out or to otherwise work off the

1 clock to complete their daily job duties.

2 68. Defendants' failure to pay Plaintiffs and Class Members the unpaid balance of  
3 regular wages owed and overtime compensation, as required by California law, violates the  
4 provisions of Labor Code §§ 510 and 1198, and is therefore unlawful.

5 69. Additionally, Labor Code § 558(a) provides "any employer or other person acting  
6 on behalf of an employer who violates, or causes to be violated, a section of this chapter or any  
7 provisions regulating hours and days of work in any order of the IWC shall be subject to a civil  
8 penalty as follows: (1) For any violation, fifty dollars (\$50) for each underpaid employee for each  
9 pay period for which the employee was underpaid in addition to an amount sufficient to recover  
10 underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each  
11 underpaid employee for each pay period for which the employee was underpaid in addition to an  
12 amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall  
13 be paid to the affected employee." Labor Code § 558(c) states, "the civil penalties provided for in  
14 this section are in addition to any other civil or criminal penalty provided by law." Defendants  
15 have violated provisions of the Labor Code regulating hours and days of work as well as the IWC  
16 Wage Orders. Accordingly, Plaintiffs and Class Members seek the remedies set forth in Labor  
17 Code § 558.

18 70. Defendants' failure to pay compensation in a timely fashion also constituted a  
19 violation of California Labor Code § 204, which requires that all wages shall be paid  
20 semimonthly. From four (4) years prior to the filing of this lawsuit to the present, in direct  
21 violation of that provision of the California Labor Code, Defendants have failed to pay all wages  
22 and overtime compensation earned by Employees. Each such failure to make a timely payment of  
23 compensation to Employees constitutes a separate violation of California Labor Code § 204.

24 71. Employees have been damaged by these violations of California Labor Code §§  
25 204 and 510 (and the relevant orders of the Industrial Welfare Commission).

26 72. Consequently, pursuant to California Labor Code, including Labor Code §§ 204,  
27 510, and 1194 (and the relevant orders of the Industrial Welfare Commission), Defendants are  
28 liable to Employees for the full amount of all their unpaid wages and overtime compensation, with

1 interest, plus their reasonable attorneys' fees and costs, as well as the assessment of any statutory  
2 penalties against Defendants, and each of them, and any additional sums as provided by the Labor  
3 Code and/or other statutes.

4 73. Further, Plaintiffs and Class Members are entitled to seek and recover reasonable  
5 attorneys' fees and costs pursuant to Labor Code §§ 210 and 1194.

6 **THIRD CAUSE OF ACTION**

7 **MEAL BREAK LIABILITY UNDER LABOR CODE §§ 226.7, 512**

8 **(Against All Defendants)**

9 74. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in  
10 full herein.

11 75. Employees regularly worked shifts greater than five (5) hours and in some  
12 instances, greater than ten (10) hours. Pursuant to Labor Code § 512 an employer may not employ  
13 someone for a shift of more than five (5) hours without providing him or her with a meal period of  
14 not less than thirty (30) minutes or for a shift of more than ten (10) hours without providing him or  
15 her with a second meal period of not less than thirty (30) minutes.

16 76. Defendants failed to provide Employees with meal periods as required under the  
17 Labor Code. Employees received short meal periods, were regularly required to work during their  
18 meal periods, as discussed above, or were provided with them after working beyond the fifth hour  
19 of their shifts, if Defendant provided them at all. Furthermore, upon information and belief, on the  
20 occasions when Employees worked more than ten (10) hours in a given shift, they did so without  
21 receiving a second uninterrupted, timely and duty-free thirty (30) minute meal period, as required  
22 by law.

23 77. Defendants policy of rounding and placing the current demands of the job over  
24 Plaintiffs and Class Members' lawful meal breaks, resulted in meal breaks that were taken late,  
25 shortened due to work demands, or not taken at all. As a result, Defendants' failure to provide  
26 Plaintiffs and Class Members with all their legally required off-duty, unpaid meal periods is and  
27 will be evidenced by Defendants' business records, or lack thereof.  
28

1           78.     Upon information and belief, on the occasions when Class Members worked more  
2 than ten (10) hours in a shift, Defendants also failed to provide them with a second, uninterrupted,  
3 timely and duty-free meal period as will be evidenced by Defendants' business records, or lack  
4 thereof.

5           79.     Defendants thus failed to provide Plaintiffs and Class Members with meal periods  
6 as required by the Labor Code, including by not providing them with the opportunity to take meal  
7 breaks, by providing them late or for less than thirty (30) minutes, or by requiring them to perform  
8 work during breaks.

9           80.     Moreover, Defendants failed to compensate Employees for each meal period not  
10 provided or inadequately provided, as required under Labor Code § 226.7 and paragraph 11 of the  
11 applicable IWC Wage Orders, which provides that, if an employer fails to provide an employee a  
12 meal period in accordance with this section, the employer shall pay the employee one (1) hour of  
13 pay at the employee's regular rate of compensation for each workday that the meal period is not  
14 provided. To the extent Defendants did make any such payments to Plaintiffs and Class Members,  
15 they failed to do so for the vast majority of the violations. Defendants failed to compensate  
16 Employees for each meal period not provided or inadequately provided, as required under Labor  
17 Code § 226.7.

18           81.     Therefore, pursuant to Labor Code § 226.7, Employees are entitled to damages in  
19 an amount equal to one (1) hour of wages at their effective hourly rates of pay for each meal  
20 period not provided or deficiently provided, a sum to be proven at trial, as well as the assessment  
21 of any statutory penalties against the Defendants, and each of them, in a sum as provided by the  
22 Labor Code and other statutes.

23                               **FOURTH CAUSE OF ACTION**

24                               **REST BREAK LIABILITY UNDER LABOR CODE § 226.7**

25                               **(Against All Defendants)**

26           82.     Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in  
27 full herein.

28     ///

1           83.     Labor Code § 226.7 and paragraph 12 of the applicable IWC Wage Orders provide  
2 that employers must authorize and permit all employees to take rest periods at the rate of ten (10)  
3 minutes net rest time per four (4) work hours, or major fraction thereof.

4           84.     Employees consistently worked consecutive shifts of at least eight (8) hours and  
5 were generally required to work shifts of greater than eight (8) hours total. Pursuant to the Labor  
6 Code and the applicable IWC Wage Order, Employees were entitled to paid rest breaks of not less  
7 than ten (10) minutes for each consecutive four (4) hour or longer shift. Defendants failed to  
8 provide Employees with timely rest breaks of not less than ten (10) minutes for each consecutive  
9 four (4) hours of work, or major fraction thereof, if rest breaks were provided at all. Furthermore,  
10 upon information and belief, on the occasions when Employees worked more than ten (10) hours  
11 in a given shift, they did so without receiving a third uninterrupted ten (10) minute rest break, as  
12 required by law.

13           85.     Labor Code § 226.7 and paragraph 12 of the applicable IWC Wage Orders provide  
14 that if an employer fails to provide an employee rest period in accordance with this section, the  
15 employer shall pay the employee one (1) hour of pay at the employee's regular rate of  
16 compensation for each workday that the rest period is not provided.

17           86.     Defendants, and each of them, have therefore intentionally and improperly denied  
18 rest periods to Plaintiffs and Class Members in violation of Labor Code § 226.7 and paragraph 12  
19 of the applicable IWC Wage Orders.

20           87.     Defendants failed to authorize and permit Plaintiffs and Class Members to take rest  
21 periods, as required by the Labor Code. Moreover, Defendants did not compensate Employees  
22 with an additional hour of pay at each Employee's effective hourly rate for each day that  
23 Defendants failed to provide them with adequate rest breaks, as required under Labor Code §  
24 226.7.

25           88.     Therefore, pursuant to Labor Code § 226.7 and paragraph 12 of the applicable IWC  
26 Wage Orders, Employees are entitled to damages in an amount equal to one (1) hour of wages at  
27 their effective hourly rates of pay for each day worked without the required rest breaks, a sum to  
28 be proven at trial, as well as the assessment of any statutory penalties against Defendants, and each



of them, in a sum as provided by the Labor Code and/or other statutes.

**FIFTH CAUSE OF ACTION**

**VIOLATION OF LABOR CODE § 226(a)**

**(Against All Defendants)**

89. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in full herein.

90. California Labor Code § 226(a) requires an employer to furnish each of his or her employees with an accurate, itemized statement in writing showing the gross and net earnings, total hours worked, and the corresponding number of hours worked at each hourly rate; these statements must be appended to the detachable part of the check, draft, voucher, or whatever else serves to pay the employee's wages; or, if wages are paid by cash or personal check, these statements may be given to the employee separately from the payment of wages; in either case the employer must give the employee these statements twice a month or each time wages are paid.

91. Defendants failed to provide Employees with accurate itemized wage statements in writing, as required by the Labor Code. Specifically, the wage statements given to Employees by Defendants failed to accurately account for wages, overtime due do to Defendants systematic rounding policy and/or altering time keeping entries, and premium pay for deficient meal periods and rest breaks, and automatically deducted wages for alleged meal periods and under recording and/or altering timekeeping entries to the detriment of Class Members, all of which Defendants knew or reasonably should have known were owed to Employees, as alleged hereinabove.

92. Throughout the liability period, Defendants intentionally failed to furnish to Plaintiffs and Class Members, upon each payment of wages, itemized statements accurately showing: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate paid on a piece-rate basis, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and (9) all applicable hourly rates in effect during the pay period and

1 the corresponding number of hours worked at each hourly rate by the employee pursuant to Labor  
2 Code § 226, amongst other statutory requirements. Defendants knowingly and intentionally failed  
3 to provide Plaintiffs and Class Members with such timely and accurate wage and hour statements.

4 93. Plaintiffs and Class Members suffered injury as a result of Defendants' knowing  
5 and intentional failure to provide them with the wage and hour statements as required by law and  
6 are presumed to have suffered injury and be entitled to penalties under Labor Code § 226(e), as the  
7 Defendants have failed to provide wage statements with accurate and complete information as  
8 required by any one or more of items Labor Code § 226 (a)(1) to (9), inclusive, and the Plaintiffs  
9 and Class Members cannot promptly and easily determine from the wage statement alone one or  
10 more of the following: (i) The amount of the gross wages or net wages paid to the employee  
11 during the pay period or any of the other information required to be provided on the itemized wage  
12 statement pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision (a), (ii) Which  
13 deductions the employer made from gross wages to determine the net wages paid to the employee  
14 during the pay period, (iii) The name and address of the employer and, (iv) The name of the  
15 employee and only the last four digits of his or her social security number or an employee  
16 identification number other than a social security number. For purposes of Labor Code § 226(e)  
17 "promptly and easily determine" means a reasonable person [i.e. an objective standard] would be  
18 able to readily ascertain the information without reference to other documents or information.

19 94. Therefore, as a direct and proximate cause of Defendants' violation of Labor Code  
20 § 226(a), Employees suffered injuries, including among other things confusion over whether they  
21 received all wages owed them, the difficulty and expense involved in reconstructing pay records,  
22 and forcing them to make mathematical computations to analyze whether the wages paid in fact  
23 compensated them correctly for all hours worked.

24 95. Pursuant to Labor Code §§ 226(a) and 226(e), Employees are entitled to recover  
25 the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation  
26 occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not  
27 exceeding an aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an  
28 award of costs and reasonable attorneys' fees.

1           96.     Labor Code § 226.3 further provides that “[a]ny employer who violates subdivision  
2 (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars  
3 (\$250) per employee per violation in an initial violation and one thousand dollars (\$1,000) per  
4 employee for each violation in a subsequent citation, for which the employer fails to provide the  
5 employee a wage deduction statement or fails to keep the required in subdivision (a) of Section  
6 226.” To the extent that Labor Code § 226.3 applies, Plaintiffs also seek such penalties on behalf  
7 of themselves and the other Class Members.

8                                   **SIXTH CAUSE OF ACTION**

9                                   **VIOLATION OF LABOR CODE § 203**

10                                  **(Against All Defendants)**

11           97.     Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in  
12 full herein.

13           98.     Numerous Employees, including Plaintiffs, are no longer employed by Defendants;  
14 they either quit Defendants’ employ or were fired there from.

15           99.     Defendants failed to pay these Employees all wages due and certain at the time of  
16 termination or within seventy-two (72) hours of resignation.

17           100.    The wages withheld from these Employees by Defendants remained due and owing  
18 for more than thirty (30) days from the date of separation from employment.

19           101.    Defendants failed to pay Plaintiffs and Class Members without abatement, all  
20 wages as defined by applicable California law. Among other things, these Employees were not  
21 paid all regular and overtime wages, including by failing to pay for all hours worked or requiring  
22 off-the-clock work or by unlawful under recording and/or altering of time entries to the detriment  
23 of Employees, and Defendants failed to pay premium wages owed for unprovided meal periods  
24 and rest periods, as further detailed in this Complaint. Defendants’ failure to pay said wages  
25 within the required time was willful within the meaning of Labor Code § 203.

26     ///

27     ///

28     ///

102. Defendants' failure to pay wages, as alleged above, was willful in that Defendants knew wages to be due but failed to pay them; this violation entitles these Employees to penalties under Labor Code § 203, which provides that an employee's wages shall continue until paid for up to thirty (30) days from the date they were due.

**SEVENTH CAUSE OF ACTION**

**FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES, LABOR CODE § 2802**

**(Against All Defendants)**

103. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in full herein.

104. Plaintiffs and Class Members are informed and believe and based thereon allege that throughout the period applicable, Defendants compelled Plaintiffs and Class Members to pay out-of-pocket for necessary work related expenses they incurred in the form of personal cellular phone usage and mileage, a requirement for employment with Defendants.

105. Plaintiffs and Class Members were not reimbursed for these lawful and necessary work related expenses or losses incurred in direct discharge of their job duties during employment with Defendants and at the direction of the Defendants pursuant to Labor Code § 2802(a) and the applicable IWC Wage Orders, paragraph 9.

106. Therefore, Plaintiffs and Class Members are entitled to reimbursement for any and all necessary work-related expenses, as provided for in Labor Code § 2802(b), incurred during the direct discharge of their duties while employed by Defendants, as well as accrued interest on those expenses that were not reimbursed from the date Plaintiffs and Class Members incurred those expenses.

107. Further, Plaintiffs and Class Members are entitled to costs and attorney's fees pursuant to Labor Code § 2802(c).

///

///

///

1 **EIGHTH CAUSE OF ACTION**

2 **VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 *ET SEQ.***

3 **(Against All Defendants)**

4 108. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in  
5 full herein.

6 109. Plaintiffs, on behalf of themselves, the Employees, and the general public, brings  
7 this claim pursuant to Business & Professions Code § 17200 *et seq.* The conduct of Defendants as  
8 alleged in this Complaint has been and continues to be unfair, unlawful, and harmful to Employees  
9 and the general public. Plaintiffs seeks to enforce important rights affecting the public interest  
10 within the meaning of Code of Civil Procedure § 1021.5.

11 110. Plaintiffs are a “person” within the meaning of Business & Professions Code  
12 § 17204, has suffered injury, and therefore has standing to bring this cause of action for injunctive  
13 relief, restitution, and other appropriate equitable relief.

14 111. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair  
15 business practices. By the conduct alleged herein, Defendants’ practices were deceptive and  
16 fraudulent in that Defendants’ policy and practice failed to provide the required amount of  
17 compensation for missed meal and rest breaks, and failed to adequately compensate Plaintiffs and  
18 Class Members for all hours worked, due to systematic business practices as alleged herein that  
19 cannot be justified, pursuant to the applicable California Labor Code and Industrial Welfare  
20 Commission requirements in violation of California Business and Professions Code §§ 17200, *et*  
21 *seq.*, and for which this Court should issue injunctive and equitable relief, pursuant to California  
22 Business & Professions Code § 17203, including restitution of wages wrongfully withheld.

23 112. Wage-and-hour laws express fundamental public policies. Paying employees their  
24 wages and overtime, providing them with meal periods and rest breaks, etc., are fundamental  
25 public policies of California. Labor Code § 90.5(a) articulates the public policies of this State  
26 vigorously to enforce minimum labor standards, to ensure that employees are not required or  
27 permitted to work under substandard and unlawful conditions, and to protect law-abiding  
28

1 employers and their employees from competitors who lower costs to themselves by failing to  
2 comply with minimum labor standards.

3 113. Defendants have violated statutes and public policies. Through the conduct alleged  
4 in this Complaint, Defendants have acted contrary to these public policies, have violated specific  
5 provisions of the Labor Code, and have engaged in other unlawful and unfair business practices in  
6 violation of Business & Professions Code § 17200 *et seq.*; which conduct has deprived Plaintiffs,  
7 and all persons similarly situated, and all interested persons, of the rights, benefits, and privileges  
8 guaranteed to all employees under the law.

9 114. Defendants' conduct, as alleged hereinabove, constitutes unfair competition in  
10 violation of the Business & Professions Code § 17200 *et seq.*

11 115. Defendants, by engaging in the conduct herein alleged, by failing to pay wages and  
12 overtime, failing to provide meal periods and rest breaks, etc., either knew or in the exercise of  
13 reasonable care should have known that their conduct was unlawful; therefore their conduct  
14 violates the Business & Professions Code § 17200 *et seq.*

15 116. By the conduct alleged herein, Defendants have engaged and continue to engage in  
16 a business practice which violates California and federal law, including but not limited to, the  
17 applicable Industrial Wage Order(s), the California Code of Regulations, and the California Labor  
18 Code including Sections 201, 202, 203, 204, 218.6, 221, 226, 226.7, 510, 512, 558, 1185, 1194,  
19 1194.2, 1197, and 2802 for which this Court should issue declaratory and other equitable relief  
20 pursuant to California Business & Professions Code § 17203 as may be necessary to prevent and  
21 remedy the conduct held to constitute unfair competition, including restitution of wages  
22 wrongfully withheld.

23 117. As a proximate result of the above-mentioned acts of Defendants, Class Members  
24 have been damaged, in a sum to be proven at trial.

25 118. Unless restrained by this Court, Defendants will continue to engage in such  
26 unlawful conduct as alleged above. Pursuant to the Business & Professions Code, this Court  
27 should make such orders or judgments, including the appointment of a receiver, as may be  
28 necessary to prevent the use by Defendants or their agents or employees of any unlawful or

1 deceptive practice prohibited by the Business & Professions Code, including but not limited to the  
2 disgorgement of such profits as may be necessary to restore Employees to the money Defendants  
3 have unlawfully failed to pay.

4 **RELIEF REQUESTED**

5 WHEREFORE, Plaintiffs pray for the following relief:

- 6 1. For an order certifying this action as a class action;
- 7 2. For compensatory damages in the amount of the unpaid minimum wages for work  
8 performed by Employees and unpaid overtime compensation from at least four (4) years prior to  
9 the filing of this action, as may be proven;
- 10 3. For liquidated damages in the amount equal to the unpaid minimum wage and  
11 interest thereon, from at least four (4) years prior to the filing of this action, according to proof;
- 12 4. For compensatory damages in the amount of all unpaid wages, including overtime  
13 and double-time pay, as may be proven;
- 14 5. For compensatory damages in the amount of the hourly wage made by Employees  
15 for each missed or deficient meal period where no premium pay was paid therefor from four (4)  
16 years prior to the filing of this action, as may be proven;
- 17 6. For compensatory damages in the amount of the hourly wage made by Employees  
18 for each day requisite rest breaks were not provided or were deficiently provided where no  
19 premium pay was paid therefor from at least four (4) years prior to the filing of this action, as may  
20 be proven;
- 21 7. For penalties pursuant to Labor Code § 226(e) for Class Members, as may be  
22 proven;
- 23 8. For penalties pursuant to Labor Code § 203 for all Class Members who quit or were  
24 fired in an amount equal to their daily wages times thirty (30) days, as may be proven;
- 25 9. For restitution for unfair competition pursuant to Business & Professions Code  
26 § 17200 *et seq.*, including disgorgement or profits, as may be proven;

1           10.     For an order enjoining Defendants and their agents, servants, and employees, and  
2 all persons acting under, in concert with, or for them, from acting in derogation of any rights or  
3 duties adumbrated in this Complaint;

4           11.     For damages and restitution for failure to reimburse all reasonable and necessary  
5 business expenses incurred by Employees as required by Labor Code § 2802, as may be proven;

6           12.     For all general, special, and incidental damages as may be proven;

7           13.     For an award of pre-judgment and post-judgment interest;

8           14.     For an award providing for the payment of the costs of this suit;

9           15.     For an award of attorneys' fees; and

10          16.     For such other and further relief as this Court may deem proper and just.

11  
12 DATED: July 12, 2021

JUSTICE LAW CORPORATION

13  
14 By: /s/ Jason Rothman

Douglas Han

Shunt Tatavos-Gharajeh

Jason Rothman

Attorneys for Plaintiffs Jasmine

Johnson, Jade Khodar-Fisher, and

Brittnie Boruff, on behalf of themselves  
and all similarly situated



- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

DATED: July 12, 2021

By: /s/ Jason Rothman  
Douglas Han  
Shunt Tatavos-Gharajeh  
Jason Rothman  
Attorneys for Plaintiffs Jasmine  
Johnson, Jade Khodar-Fisher, and  
Brittnie Boruff, on behalf of themselves  
and all similarly situated